

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARIKA A. HAYES,

Plaintiff,

-against-

ACAP,

Defendant.

24-CV-1883 (LTS)

ORDER

LAURA TAYLOR SWAIN, United States District Judge:

Plaintiff filed this action *pro se*. On March 25, 2024, the Court directed Plaintiff to file a signed *in forma pauperis* (IFP) application. On May 29, 2024, the Court dismissed the action on the ground that Plaintiff had not done so. Plaintiff then filed an application (ECF 12) indicating that she had filed a signed IFP application, which was included as part of her amended complaint.¹

The Court liberally construes this submission as a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure. After reviewing the arguments in Plaintiff's submission, the Court grants the motion.

DISCUSSION

A party who moves to alter or amend a judgment under Rule 59(e) must demonstrate that the Court overlooked “controlling law or factual matters” that had been previously put before it. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). “Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court.” *Range Road Music, Inc.*

¹ The signed IFP application is at pages 58 and 60 of the 85-page amended complaint (ECF 8). Another unsigned IFP application was also included within the amended complaint.

v. Music Sales Corp., 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) (“A motion for reconsideration is not an invitation to parties to ‘treat the court’s initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court’s ruling.’”) (internal quotation and citations omitted). Moreover, a motion filed under Rule 59(e) “must be filed no later than 28 days after the entry of the judgment.” *Id.*

The action was dismissed without prejudice for Plaintiff’s failure to comply with the order directing her to pay the filing fees or submit a signed IFP application. Plaintiff submitted her Rule 59(e) motion on June 3, 2024, less than 28 days after judgment entered. For unknown reasons, Plaintiff’s signed IFP application was included in the middle of her amended complaint, at pages 58 and 60, making it difficult to identify. Because Plaintiff did submit a signed IFP application, the Court grants Plaintiff’s Rule 59(e) motion (ECF 12) and directs the Clerk of Court to vacate the order of dismissal and judgment.

CONCLUSION

Plaintiff’s motion for reconsideration under Rule 59(e) (ECF 12) is granted. The Clerk of Court is directed to vacate the order of dismissal and judgment (ECF 10-11) and reopen this action. The Clerk of Court is further directed to file Plaintiff’s signed IFP application (attached hereto) as an amended IFP application. Plaintiff also indicates that she intended to name Defendant ASCAP, not “ACAP.” The Court therefore directs the Clerk of Court to change Defendant’s name on the docket to ASCAP.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 10, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Anika Hayes,

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

24 CV-1883 (LTS) ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

ASCAP (NFP)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☒ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? I was a student last

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment

☒ Yes

☒ No

(b) Rent payments, interest, or dividends

☐ Yes

☐ No

No

- (c) Pension, annuity, or life insurance payments ☐ Yes ☐ No
- (d) Disability or worker's compensation payments ☐ Yes ☐ No
- (e) Gifts or inheritances ☐ Yes ☐ No
- (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) ☒ Yes ☐ No
- (g) Any other sources ☐ Yes ☒ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

Na

If you answered "No" to all of the questions above, explain how you are paying your expenses:

Na

4. How much money do you have in cash or in a checking, savings, or inmate account?

Na

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

Na

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

Na

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

Na

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

No

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

To my understanding I declare

Dated march 11, 2024

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Arika A. Hayes

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State

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Telephone Number

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